

U.S. Department of Homeland Security
Citizenship and Immigration Services

PUBLIC COPY

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 Eye Street, NW
Washington, D.C. 20536

OCT 30 2003

FILE: EAC 03 085 52660 Office: VERMONT SERVICE CENTER

Date:

IN RE: Petitioner:
Beneficiaries:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(iii)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

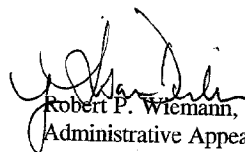
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

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prevent identity unwarranted
invasion of personal privacy

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a professional manpower training and consulting service. It seeks classification of the beneficiaries as nurse trainees. The director determined that the training would be on behalf of beneficiaries who already possess substantial knowledge and expertise in the area of proposed training. The director also found that the petitioner had not established that the beneficiaries would not be placed in a position that is in the normal operation of the business. Finally, the director stated that the petitioner had not established that it had sufficiently trained staff to provide the proposed training.

On appeal, the petitioner submits a brief stating that the director erred in making these determinations. The petitioner states that the beneficiaries do not have any training or expertise in the specific area of the proposed training. The petitioner also states that the director erred in his calculations of the amount of time spent in on-the-job training and, therefore, the amount of time spent in the normal operation of business. Additionally, the petitioner states that it has an adequate number of trained staff to provide the training.

Section 101(a)(15)(H)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(iii), provides classification for an alien having a residence in a foreign country, which he or she has no intention of abandoning, who is coming temporarily to the United States as a trainee, other than to receive graduate medical education or training, in a training program that is not designed primarily to provide productive employment.

The regulation at 8 C.F.R. § 214.2(h)(7) states, in pertinent part:

(ii) Evidence required for petition involving alien trainee--(A) Conditions. The petitioner is required to demonstrate that:

(1) The proposed training is not available in the alien's own country;

(2) The beneficiary will not be placed in a position which is in the normal operation of the business and in

which citizens and resident workers are regularly employed;

(3) The beneficiary will not engage in productive employment unless such employment is incidental and necessary to the training; and

(4) The training will benefit the beneficiary in pursuing a career outside the United States.

(B) Description of training program. Each petition for a trainee must include a statement which:

(1) Describes the type of training and supervision to be given, and the structure of the training program;

(2) Sets forth the proportion of time that will be devoted to productive employment;

(3) Shows the number of hours that will be spent, respectively, in classroom instruction and in on-the-job training;

(4) Describes the career abroad for which the training will prepare the alien;

(5) Indicates the reasons why such training cannot be obtained in the alien's country and why it is necessary for the alien to be trained in the United States; and

(6) Indicates the source of any remuneration received by the trainee and any benefit, which will accrue to the petitioner for providing the training.

(iii) Restrictions on training program for alien trainee. A training program may not be approved which:

(A) Deals in generalities with no fixed schedule, objectives, or means of evaluation;

(B) Is incompatible with the nature of the petitioner's business or enterprise;

(C) Is on behalf of a beneficiary who already possesses substantial training and expertise in the proposed field of training;

(D) Is in a field in which it is unlikely that the knowledge or skill will be used outside the United States;

(E) Will result in productive employment beyond that which is incidental and necessary to the training;

(F) Is designed to recruit and train aliens for the ultimate staffing of domestic operations in the United States;

(G) Does not establish that the petitioner has the physical plant and sufficiently trained manpower to provide the training specified; or

(H) Is designed to extend the total allowable period of practical training previously authorized a nonimmigrant student.

The record, as it is presently constituted, contains: a description of the 18-month training program; the beneficiaries' academic documents and resumes; copies of the beneficiaries' passports, visas and I-94 cards; a letter from the petitioner; and a letter from the Deputy Consul General of the Consulate General of the Philippines in New York stating that similar training is unavailable in the Philippines.

The first basis for the director's denial of the petition is that the training would be on behalf of beneficiaries who already possess substantial knowledge and expertise in the area of proposed training. Both of the beneficiaries have bachelor's degrees in nursing in their home country and have worked in the field, one beneficiary for 10 years and the other for 19 years. The petitioner submitted the coursework the beneficiaries took in the process of obtaining their degrees and that provides clear information about their training. It is not possible, however, to know exactly what experience the beneficiaries have. Their resumes cite identical duties and the only differences on the resumes are the times and places worked and their educational backgrounds, which makes it appear as if at least one of the resumes may not entirely accurate. It is unlikely that the primary duties of each beneficiary working at a total of four different sites would be identical. The petitioner states on appeal that care for people with HIV/AIDS (the area of proposed training) is a highly specialized field, and cites a 1994 publication ("HIV Manual for Healthcare Providers") to support its statement. It is determined that caring for individuals with

HIV/AIDS does require special training and that the coursework taken by the beneficiaries in gaining their degrees does not qualify. As noted above, however, the beneficiaries' specific experience in nursing is unclear at best, and without that knowledge, a decision cannot be made as to whether their years of working in nursing might constitute substantial expertise. The director's remarks on this issue are withdrawn because there is not enough information provided to make a determination.

The director also stated that the petitioner had not established that it had sufficiently trained staff to provide the proposed training. On appeal, the petitioner states:

[W]e have competent Baccalaureate degreed nurses who is [sic] our teaching staff. . . . On-the-job training (OJT), on the other hand, takes place in an actual medical or health facility environment such as the Valley View Health Care Center in Newton, New Jersey, Wanaque Nursing and Rehabilitation Center, Haskell, NJ where our trainees are exposed and obtain practical training as nurses on the different aspects of Gerontological Nursing [sic].

There is no evidence in the record beyond the petitioner's statement regarding the trainers. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Finally, the director found that the petitioner had not established that the beneficiaries would not be placed in a position that is in the normal operation of the business. The petitioner states that the beneficiaries will be gaining practical experience in gerontological nursing, rather than working with HIV/AIDS patients. In reviewing information on the Internet about the health care facilities the petitioner cited as training sites, it appears that they primarily provide services to the elderly. It does appear the petitioner will be placing the beneficiaries in facilities to provide services that would be in the normal operation of business, since the petitioner's primary business is nursing placement. Since the training plan is for the beneficiaries to receive on-the-job training in a facility specializing in a field other than that in which they are being trained, it is determined that the petitioner is simply placing them in a position in the regular course of business.

Beyond the decision of the director, there is no evidence in the record other than the petitioner's statements, that it is involved in training of any sort. It appears that the proposed training may be incompatible with the nature of the petitioner's business and, therefore, the training program cannot be approved. 8 C.F.R. § 214.2(h)(7)(iii)(B). The petitioner's website describes the organization as recruiting "highly trained nurse graduates from accredited schools in the Philippines for deployment in US medical facilities." The site's 'headline' refers to professionals in nursing, physical therapy and medical technology, although the text only discusses nurses. In its "Partners" section, the website lists the Mamertus Center for Nursing Advancement, "established to help augment the decreasing supply of patient care personnel by producing qualified, competent, dedicated and highly trained nurses." When clicking on the link, it is a dead link, with no available document. In searching for Mamertus using a variety of search engines, the only reference is to either this same, non-existent website or to the petitioner's page.

Additionally, the regulations forbid approving training that deals in generalities with no fixed schedule, objectives, or means of evaluation. There is no method of evaluation included in the training program.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.